

Thank you for working on the Notice of Proposed Rulemaking on towers and birds. We have been trying for more than eight years to have the Commission adopt modest measures to prevent the deaths of millions of migratory birds each year at communication towers. The comment and reply period on the FCC NPRM on Towers and Birds ended on May 23 and we would request your assistance in assuring that the Commission act in a timely fashion to adopt final rules.

It has now been more than 14 months since the Commission voted to dismiss our Gulf Coast Petition and to initiate this NPRM. Commissioner Copps filed a statement at the time that "There is simply no question that bird-tower collisions are a serious problem....Put bluntly, for too many years this agency treated a widely-recognized problem with not-so-benign neglect. Now we have learned, I hope, that this is not a problem that will just go away if we ignore it. Instead, we need to face up to the hard questions and resolve them in a timely and effective fashion....I look forward to working with my colleagues to bring this rulemaking to conclusion in the weeks and months – hopefully not years – ahead."

Comments submitted on the NPRM by Ph.D. research scientists, top Ph.D. ornithologists, the U.S. Fish and Wildlife Service, and the nation's leading conservation organizations working on bird conservation all conclude that the evidence is there for adopting solutions for minimizing bird kills at towers while in no way impeding the provision and expansion of telecommunication services. These measures are detailed in our comments (first attachment). They relate to tower lights, height, and use of guy wires. Here is a brief summary of the core of what needs to be adopted by the Commission:

Applicants for an antenna structure:

- 1) Shall submit a written declaration to demonstrate why there is no viable opportunity for co-location of an antenna and that they cannot practicably keep a tower structure under 200', thus avoiding lighting requirements in order to better protect migratory birds.
- 2) Shall use medium intensity white strobe lights for nighttime conspicuity on towers exceeding 199' as the preferred system over red obstruction lighting systems to the maximum extent possible and in cases where this cannot be done, then medium intensity red strobe lights shall be used exclusively. The use of steady-burning red obstruction lights shall be avoided.
- 3) Should not be allowed to use guy wires on any new antenna structure under 200', and for tower between 200' and less than 500', the applicant should not use guy wires unless certification is submitted by a qualified engineer that the structure cannot practicably be built as a monopole or of lattice design.
- 4) All existing registered antenna structures that employ red steady burning lights (FAA L-810) for night time conspicuity shall be required to phase in

the FAA preferred white strobe lighting (FAA L-865) system to replace red steady burning lights. If replacement of the L-810 lights with white strobes (L-865) is not possible, then the use of L-864 red strobe or fast blinking lights for night time conspicuity shall be employed. This should occur when steady burning red lights (L-810) on existing antenna structures burn out and need to be replaced. All such towers shall terminate the use of red steady burning lights for nighttime use within five years of finalization of this rulemaking.

The call for Commission action on these measures is supported by more than 40 national and regional groups submitting comments on this NPRM in addition to more than 2,500 individual U.S. citizens filing comments. All have urged Commission action to better protect birds at towers.

Dr. Joelle Gehring and Dr. Paul Kerlinger, the scientists who completed the important Michigan tower research, submitted comments on the NPRM and filed their final two research reports concluding that simply turning off red steady burning lights (FAA L-810) reduces bird mortality by 50%-70%. They state: "The elimination of these same lights would also benefit the Federal Communication Commission (FCC) and the Federal Aviation Administration (FAA). Because the FCC is tasked with licensing towers under the National Environmental Policy Act (NEPA), they should welcome a means of reducing fatalities thereby increasing federal compliance with the Migratory Bird Treaty Act (MBTA)."

These researchers found that guyed towers kill 16X more birds than unguyed towers of the same height, and the authors state "According to these data bird fatalities may be prevented by 69% -100% by constructing unguyed towers instead of guyed towers." They note that: "These data provide managers and regulators with the first quantitative data for establishing best practices to minimize collision fatalities of migrating and other birds at federally licensed communication towers."

The U.S. Fish and Wildlife Service formal comments similarly urge the adoption of measures related to the elimination of red steady burning lights and preventing the use of guy wires where possible. Dr. Longcore, Dr. Gauthreaux, and Catherine Rich have submitted a scholarly report documenting the significance of bird kills at towers to populations of many U.S. FWS Birds of Conservation Concern and concluding that such mortality is biologically significant for many species. They conservatively estimate that at least 4.3 million birds are killed annually at FCC registered towers.

We sincerely hope that in reviewing the submittals now before the Commission, the Commission will act very soon to adopt the modest measures we have urged that are in line with those submitted by the U.S.

Fish and Wildlife Service, the tower researchers, and the other scientists commenting on the NPRM. These measures are based on sound scientific evidence and their adoption would significantly reduce avian mortality without in any way adversely impacting or impeding the provision and build-out of communication services in this country.

Thank you.

Gerald W. Winegrad